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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,485	12/05/2003	Cynthia L. Wyngaard	19,525	3112
23556 7590 07/31/2009 KIMBERLY-CLARK WORLDWIDE, INC. Catherine E. Wolf 401 NORTH LAKE STREET NEENAH, WI 54956			EXAMINER BOGART, MICHAEL G	
			ART UNIT 3761	PAPER NUMBER
			MAIL DATE 07/31/2009	DELIVERY MODE PAPER

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The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CYNTHIA L. WYNGAARD

Appeal 2008-001266
Application 10/729,485
Technology Center 3700

Decided:¹ July 31, 2009

Before: WILLIAM F. PATE, III, JENNIFER D. BAHR, and LINDA E.
HORNER, *Administrative Patent Judges.*

BAHR, *Administrative Patent Judge.*

DECISION ON APPEAL

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

STATEMENT OF THE CASE

Cynthia L. Wyngaard (Appellant) appeals under 35 U.S.C. § 134 (2002) from the Examiner's decision rejecting claims 1-33. We have jurisdiction over this appeal under 35 U.S.C. § 6 (2002).

The Invention

Appellant's claimed invention is directed to an absorbent article intended for personal wear. Spec. 1, para. [0001].

Claim 1, reproduced below, is exemplary of Appellant's claimed subject matter.

1. An absorbent article defining a front waist region, a back waist region, a crotch region that extends between and connects said front and back waist regions, a longitudinal direction and a lateral direction, an inner surface, an outer surface opposite said inner surface, and a pair of longitudinally opposed end margins and a pair of laterally opposed side margins, said article comprising:

A stretchable outercover;

A stretchable bodyside liner joined to the stretchable outercover in a superposed relation wherein said outercover and said bodyside liner are joined along at least a portion of each of said end margins to provide a front waist seam and a back waist seam and wherein said outercover and said bodyside liner are joined along at least a portion of each of said side margins in said front waist region and said back waist region to provide a pair of side seams in each of said front waist region and said back waist region;

An absorbent body disposed between said outercover and said bodyside liner, said absorbent

body defining a pair of longitudinally opposed absorbent end edges and a pair of laterally opposed absorbent side edges;

A first elastomeric suspension member disposed only in said front waist region and attached to said absorbent body in said front waist region; and

A second elastomeric suspension member attached to said absorbent body in said back waist region;

Wherein said first elastomeric suspension member is sandwiched between said outercover and said bodyside liner in said pair of side seams in said front waist region, and wherein said second elastomeric suspension member is sandwiched between said outercover and said bodyside liner in said pair of side seams in said back waist region.

The Rejections

The Examiner has rejected claims 1-33 as follows:

- (1) claims 1-5, 8, 11, 16-19, and 26-28 under 35 U.S.C. § 102(b) as being anticipated by, or, in the alternative, under 35 U.S.C. § 103(a) as being unpatentable over Jitoe (US 2002/0151862 A1, published Oct. 17, 2002);
- (2) claims 6, 7, 13, 15, 20, 23, 25, 29, 31, and 33 under 35 U.S.C. § 103(a) as being unpatentable over Jitoe²; and
- (3) claims 9, 10, 12, 14, 21, 22, 24, 30, and 32 under 35 U.S.C. § 103(a) as being unpatentable over Jitoe and Osborn (US 5,713,884, issued Feb. 3, 1998).

² The alternative rejection of these claims as being anticipated by Jitoe (Final Rejection 7) has been withdrawn.

SUMMARY OF DECISION

We AFFIRM.

ISSUE

In rejecting the claims, the Examiner found that the absorbent body and elastomeric suspension members of claim 1 read on the absorbent core 4 and elastic members 21, respectively, of Jitoe. Ans. 4. According to the Examiner, Jitoe's disclosed arrangement of elastic members 21 being directly pressed against the absorbent core 4 during use "may be reasonably interpreted as an attachment of the suspension members to the absorbent core." Ans. 9. In the alternative, the Examiner points out that the absorbent core 4 may be bonded to the backsheet 3, which in turn may be bonded to the elastic members 21 via bonds 13 and 25, thus providing an indirect attachment of the elastic members 21 to the absorbent core 4 via the backsheet 3.³ *Id.*

In contesting the rejections of all of the claims involved in this appeal, Appellant relies on a single argument, namely, that Jitoe does not disclose a first elastomeric suspension member that is "attached to said absorbent body in said front waist region" or a second elastomeric suspension member "attached to said absorbent body in said back waist region." App. Br. 4 and 6-7. Appellant does not allege any other error in the Examiner's rejections. Appellant specifically directs her argument in the Appeal Brief to claim 1 (App. Br. 4-6), and further submits simply that the rejections of claims 2-17 should be reversed because of the dependence of these claims from claim 1 (App. Br. 6). With respect to the other two independent claims 18 and 26,

³ We focus on this alternative position in our opinion.

and their dependent claims, Appellant simply contends that “[f]or at least the reasons described above with respect to claim 1,” the rejections of claims 18-33 also should be reversed. App. Br. 6-7. Therefore, we focus our attention on claim 1.

Specifically, Appellant argues that the terms “attach” and “join” as used in the present application require more than simply positioning two items adjacent or near one another, as the Examiner’s rejection implies. App. Br. 5. Appellant further points out Jitoe’s teaching that the portions of the elastic members 21 extending across the absorbent core 4 are joined neither to the backsheet 3 nor to the absorbent core 4. App Br. 5; *see* Jitoe, paras. [0010], [0030], [0034], and [0041]. Appellant relies on this teaching to support the position that Jitoe’s elastic members 21 are not “attached” to the absorbent core 4, as called for in claim 1.⁴

Accordingly, the sole issue raised in this appeal is:

Has Appellant demonstrated that the Examiner erred in finding that Jitoe’s elastic members 21 are “attached” or “joined” to absorbent core 4?

FACTS PERTINENT TO THE ISSUE

⁴ While the language of independent claims 18 and 26 differs somewhat from that of claim 1, claims 18 and 26 contain essentially the same limitation. Claim 18 calls for the absorbent body to be “joined to said first elastomeric suspension member and said second elastomeric suspension member,” and claim 26 requires at least one elastomeric suspension member “attached to each of said absorbent side edges [of said absorbent body] in said front waist region” and at least one elastomeric suspension member “attached to each of said absorbent side edges [of said absorbent body] in said rear waist region.”

1. Appellant's Specification sets forth the following definition:

As used herein, "attach," and its variations, such as "attached," and "attachment," and "join" and its variations, such as "joined" or "joinder" may indicate a direct connection of multiple elements, an indirect connection of multiple elements (such as via at least one intermediate element), or an integral association of elements.

Spec. 22, para. [0060].

2. Therefore, Appellant's Specification explicitly defines "attached" and "joined" so as to encompass both direct and indirect connection of multiple elements, such as via at least one intermediate element.
3. Jitoe teaches that elastic members 21 may be secured to backsheet 3 by means of adhesive 25. Para. [0030].
4. Jitoe teaches that absorbent core 4 may be bonded to backsheet 3 in any region other than the crotch region 8. Para. [0040].
5. On the basis of Facts 3 and 4, the Examiner correctly found that the elastic members 21 are indirectly attached to absorbent core 4 via the backsheet 3. Ans. 9.
6. The attachment by means of adhesive 25 or adhesive 13 of the elastic members 21 to absorbent core 4 via backsheet 3 is in the front and rear waist regions 6 and 7. Figs. 1 and 2, para. [0027].
7. Jitoe teaches that the elastic members 21 are attached to neither the backsheet 3 nor the absorbent core 4 "in the area defined between the transversely opposite side edges

23, 23 of the absorbent core 4” so as to avoid wrinkling of the backsheet 3 and absorbent core 4 upon contraction of the elastic members 21. Paras. [0030] and [0034]. Jitoe does not teach that the elastic members 21 are not attached to the backsheet 3 or absorbent core 4 via a connection outside of the absorbent core 4.

PRINCIPLES OF LAW

It is well settled that the United States Patent and Trademark Office (PTO) is obligated to give claim terms their broadest reasonable interpretation, taking into account any enlightenment by way of definitions or otherwise found in the specification. *In re ICON Health and Fitness, Inc.*, 496 F.3d 1374, 1379 (Fed. Cir. 2007).

ANALYSIS

Consistent with the definition explicitly set forth in Appellant’s Specification (Facts 1 and 2), we construe the term “attached” in claim 1 as including either a direct connection of multiple elements or an indirect connection of multiple elements, such as via at least one intermediate element.⁵

The elastic members 21 are indirectly attached by means of adhesive to absorbent core 4 via the backsheet 3 in the front and rear waist regions 6 and 7. *See* Facts 3-6. Jitoe’s elastic members 21 thus satisfy the claim

⁵ While we focus on claim 1 in this opinion, the term “joined” used in claim 18 is subject to the same construction, in light of the explicit definition in Appellant’s Specification (Fact 1).

limitations at issue, namely, a first elastomeric suspension member “attached to said absorbent body in said front waist region” and a second elastomeric suspension member “attached to said absorbent body in said back waist region.”

We fully appreciate Jitoe’s teaching that the members 21 extending across the absorbent core should not be attached to the absorbent core 4 between the opposite side edges 23, 23 of absorbent core 4, so as to avoid wrinkling. *See* Fact 7. This in no way detracts from or nullifies Jitoe’s teaching of an indirect connection of the elastic members 21 to absorbent core 4 via backsheet 3 (an intermediate element).

CONCLUSIONS

Appellant has not demonstrated that the Examiner erred in finding that Jitoe’s elastic members 21 are “attached” or “joined” to absorbent core 4. Therefore, Appellant has not demonstrated error in the Examiner’s rejections of claims 1-33.

DECISION

The Examiner’s decision is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED

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Application 10/729,485

hh

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